

**ZONING BOARD OF APPEALS  
MEETING MINUTES**

**July 12, 2011**

**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

**ATTENDANCE:**

**Members Present:** Deland Davis                      Carlyle Sims  
                                 Greg Dunn                              John Stetler  
                                 Rick Barnes

**Members Excused:** Mike Fatt, James Moreno, and Becky Squires

**Staff Present:**              Jill Steele, Deputy City Attorney  
                                 Glenn Perian, Senior Planner  
                                 Leona Parrish, Admin. Assistant, Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:** None

**CORRESPONDANCE:** Letter received today in opposition to appeal #Z-07-11; also Mr. Glenn Perian, Senior Planner distributed to board a copy of the new adopted Standards for Dimensional Variance.

**OLD BUSINESS:**

A) **Appeal #Z-02-11: (Parcel #2550-00-013-0 Upton Avenue)** Petition from Adams Outdoor Advertising, Mr. William B. Jackson, Real Estate Manager, 407 Ransom, Kalamazoo, MI 49007. First request is an appeal of Planning Staff determination for replacement of billboard sign; and pending their decision, a request for a variance to allow for a billboard sign to be reconstructed. Parcel is zoned "C-3 Intensive Business District" and commonly known as vacant lot on Upton Avenue, Parcel #2550-00-013-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1296.28(e) & 1296.39(f).

It was noted that the Planning Department has not heard from petitioner; Ms. Jill Steele, Deputy City Attorney noted the petitioner will be meeting with Ms. Susan Bedsole and suggest the board make a motion to adjourn until the next meeting.

**MOTION:** MR. GREG DUNN MADE A MOTION TO ADJOURN APPEAL #Z-02-11 UNTIL THE NEXT ZONING BOARD MEETING; SUPPORTED BY MR. CARLYLE SIMS.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, **MOTION APPROVED.**

*Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the*

*public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.*

**NEW BUSINESS:**

- A. **Appeal #Z-06-11:** Petition from Mr. & Mrs. Brian and Mary Jo Bundy, 340 Sherman Drive, Battle Creek, MI 49015. Request is for a dimensional variance to allow for a new porch to be built with a 17 ft. front-yard setback. Parcel is zoned "R-1B Single Family Residential District". Commonly known as 340 Sherman Drive, Parcel #6950-13-823-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1286.05(a).

Mr. Glenn Perian, Senior Planner outlined the report stating this is a petition from Mr. and Mrs. Brian and Mary Jo Bundy, 340 Sherman Drive, seeking a dimensional variance to construct a covered porch 17 ft. from a front property line on property located at 340 Sherman Drive. The property is located in the R-1B zoning district where a 30 ft. front-yard setback is required for structures. The subject lot is 44 ft. wide by 96 ft. deep and does not meet the minimum lot standard for the R-1B zone.

Mr. Perian stated the planning staff is recommending approval of this appeal based on the practical difficulties relating to the construction of the porch because the lot is smaller and narrower than that required for the R-1B zone. Stated the board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act. For this Non-use (dimensional) Variance:

- A. Staff believes that a practical difficulty would, in fact, exist if the strict non-use requirements of the Ordinance to place the accessory building in the rear yard were applied to this specific building project. The practical difficulty from a failure to grant the variance would include substantially more than a mere inconvenience or a mere inability to attain a higher financial return in this case.
- B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant based on the slope of the rear yard of approximately 12' in this case.
- C. Staff does not believe that if a variance in this case is granted it will alter or conflict with the intent of the Ordinance considering the public benefits intended to be secured by the Zoning Code and the rights of others whose property would be affected by the allowance of the variance.
- D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Mrs. Bundy (owner) came forward to speak; stated she would like to have a porch like her neighbors and be allowed to have the same as they have.

Mr. Doug Thiel (contractor for property owner) stated he would like to move it 3 ft. to make it the same width of the house and by doing so would then be even with the neighbor's porch.

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION:** MR. CARLYLE SIMS MADE A MOTION TO APPROVE APPEAL #Z-06-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN FRONT PORCH TO BE

**BUILT WITH A 17FT. FRONT-YARD SETBACK AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MR. DELAND DAVIS.**

**Discussion:**

Mr. Greg Dunn asked staff regarding the new language for non-use variance (read item #A). Asked if this is staff's opinion or it is a mere inconvenience to want a front porch. Noted that in the past they were not to look at or consider other residents properties in comparison and should they consider it unique as it is unique in itself because of the lot dimension. Mr. Perian stated yes, he is on the right track and they need to see the uniqueness of the parcel.

Mr. Dunn stated he does see that the other neighbor's homes sit within the 30 ft. setback.

Mr. Stetler stated this home does appear naked and as though it needs a porch.

Mr. Sims stated he feels it would be an improvement to the neighborhood.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.**

B. **Appeal #Z-07-11:** Petition from William Helphingstine, 220 Edgebrook Drive, Battle Creek, MI 49015. Request is for a dimensional variance to allow for an accessory building to be constructed in a side-yard. Parcel is zoned "R-1B Single Family Residential District". Commonly known as 220 Edgebrook Drive, Parcel #5510-09-703-0. The permit application is requested pursuant to Planning and Zoning Code, Chapter 1286.05 (b)(1).

Mr. Glenn Perian, Senior Planner outlined the report stating this is a petition from Mr. William Helphingstine seeking a dimensional variance to construct a storage building in a side-yard at 220 Edgebrook Drive. The property is located in a residential zoning district. The main residential structure contains an attached area for the storage of vehicles and personal property (an attached garage); therefore, the ordinance states accessory buildings must be located in the rear-yard. The subject lot is approximately 152 ft. wide by 167 ft. deep and meets the minimum lot standard for the R-1B zone. Because of the slope of the property in the rear-yard is approximately 12 ft. (shown on the aerial in your packets) it makes it difficult for the appellant to locate an accessory building in the rear-yard.

Mr. Perian stated the Planning Staff is recommending approval of appeal #Z-7-11 to place an accessory building in the side yard based on the practical difficulties relating to the construction of the accessory buildings because of the slope of the land in the rear-yard of the property located at 220 Edgebrook Drive. The board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act. For this Non-Use (dimensional) Variance:

A. Staff believes that a practical difficulty would, in fact, exist if the strict non-use requirements of the Ordinance to place the accessory building in the rear yard were applied to this specific building project. The practical difficulty from a failure to grant the variance would include substantially more than a mere inconvenience or a mere inability to attain a higher financial return in this case.

- B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant based on the slope of the rear yard of approximately 12' in this case.
- C. Staff does not believe that if a variance in this case is granted it will alter or conflict with the intent of the Ordinance considering the public benefits intended to be secured by the Zoning Code and the rights of others whose property would be affected by the allowance of the variance.
- D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Mr. Greg Dunn asked if the appellant is asking for the variance for placement of garage only, and not for a size or setback variance. Mr. Perian stated that is correct.

Mr. Bill Helphingstine, 220 Edgebrook Drive, owner came forward to speak and stated for example with the recent power outages he has used a generator and it would be of a benefit to have a storage building to the side of his property to make it easier to use the equipment. Noted the location to the rear of his property is bad as it goes down-hill. Mr. Helphingstine provided a photo and drawing of the proposed building and noted he planned to have someone construct it and he planned to paint it to match his home.

Mr. Carlyle Sims made reference to the letter received today in opposition from his two neighbors; wanting it to be placed on the south-side of his property and that it might look better on that side.

Mr. Helphingstine stated that each neighbor on the north and south of him think it is good and that if it were placed on the south side it would be not as useful and would be more visible.

Mr. Davis asked if it were possible to move it back further to the rear of the house. Mr. Helphingstine stated when Mr. Davis visited his property he could see that he is required to have 10 ft. between his house and structure and still be 3 ft. from the side and rear property line and could build without needing a variance; if it were placed differently he would need a variance for the distance between his residence and rear set-back.

Mr. Perian explained that if he were to place it further to the rear he would need a variance for the distance between this house and proposed structure and also require a variance for the side and rear setback; with the requested side-yard variance it is less complicated and he would meet all the other required setbacks.

Mr. Dunn asked Mr. Helphingstine how long he has lived at this residence. Mr. Helphingstine stated 30 years; noted if he were to extend it further from the house he would be encroaching on his neighbor and also have to reconstruct his driveway.

Mr. Dunn asked Mr. Helphingstine if he had altered his property since he had purchased. Mr. Helphingstine stated no, he has not altered the foot-print of his property.

Mr. Carlyle Sims asked if he could move it more to the front of the house and put it on an angle. Mr. Helphingstine stated he was abiding with the 3 ft. setback and if he brought it more to the front it would bring out the corner of the building and he would need to work with Mr. Perian to try and make it fit inside the area.

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE APPEAL #Z-07-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ACCESSORY BUILDING TO BE BUILT IN A SIDE-YARD AS REQUESTED ON THEIR APPLICATION; SUPPORTED BY MR. RICK BARNES.**

**Discussion:**

Mr. Greg Dunn stated he agrees with the staff report and because of the lot dimensions it limits the location for the accessory building. Stated he would be voting in favor in accordance with the staff report.

Mr. John Stetler noted the neighbors do not have out-buildings and think that some homes are not suitable to be built upon and feel this site is a site that is not suitable for an out-building. Stated he would not be voting in favor of this appeal.

Mr. Greg Dunn stated the petitioner purchased this property with the home already built upon it and feels this was not self created.

Ms. Jill Steele noted that on June 17, 2011 the ordinance was changed and adopted before this petition had been received; she is asking Mr. Dunn to amend his motion to include the new standards for dimensional variances.

**AMENDED MOTION: MR. GREG DUNN AMENDED IS MOTION TO APPROVE APPEAL #Z-07-11 FOR A VARIANCE TO ALLOW CONSTRUCTION OF AN ACCESSORY BUILDING TO BE BUILT IN A SIDE-YARD AS REQUESTED ON THEIR APPLICATION BASED ON THE NEWLY ADOPTED STANDARDS FOR DIMENSIONAL VARIANCES; SUPPORTED BY MR. RICK BARNES.**

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FOUR IN FAVOR (DAVIS, DUNN, BARNES, & SIMS; ONE OPPOSED (STETLER), MOTION APPROVED.**

**APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE JUNE 14, 2011 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.**

**COMMENTS BY THE PUBLIC: None**

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. Carlyle Sims thanked the staff for preparing and distributing the meeting packets and reports in sufficient time to allow them to review prior to the meeting.

**ADJOURNMENT:** Mr. John Stetler made a motion for the meeting to be adjourned; all stated in favor, meeting was adjourned at 4:41 P.M.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department